

# IN THE SEYCHELLES COURT OF APPEAL

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## **Reportable**

[2023] (18 December 2023)

SCA 12/2023

(Arising in [2023] SCSC 135 CS

No.97 of 2020)

**Betty Adela**

*(represented by Mr. Joel Camille)*

**Appellant**

versus

**Simone Adela**

*(represented by Mr. Serge Rouillon)*

**Respondent**

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**Neutral Citation:** *Adela v Adela* (SCA No.12/2023) [2023] (Arising in [2023] SCSC 135 CS No. 97/2020)

**Before:** Twomey-Woods, Robinson, Tibatemwa-Ekirikubinza, JJA

**Summary:** *Tiers de bonne foi - Compensation due to a tiers de bonne foi.*

**Heard:** 6 December 2023

**Delivered:** 18 December 2023

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## **ORDER**

The appeal fails and it is hereby dismissed. Consequently, the orders of the Supreme Court are upheld. Costs are awarded in favour of the Respondent.

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## **JUDGMENT**

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**Dr. Prof. Tibatemwa-Ekirikubinza**

**(Robinson, Dr. M. Twomey-Woods JJA concurring)**

### **The Facts**

1. The Appellant (Betty Adela) is a daughter in law of the Respondent (Simone Adela). The Respondent is the Appellant's mother in law. The Respondent sued the Appellant in the Supreme Court for an order evicting her from land situated at Pointe Larue comprised in

S4542 which she claims ownership for more than 50 years. The Respondent averred that she has been living on that said land with some of her other children.

2. The Respondent also stated in her plaint that her daughter, Maryline, sought permission some years ago for her son - the late Elvis Adela (Simone Adela's grandson) to erect a small temporary house on the property. This was because Elvis' partner at the time, Ms. Rosette, was expecting a child and they could no longer live with Maryline. The Respondent allowed Elvis to build a small corrugated iron sheet house using existing materials given to him by his own family and only the kitchen was constructed with bricks. Elvis Adela worked as a casual labourer in carpentry and welding, and he built a small 2-bedroom house. After the separation of Elvis and Ms. Rosette, the Appellant (Betty Adela) moved into the 2-bedroom house with Elvis Adela. The Respondent was later informed that a plywood partition was put in one of the existing bedrooms to make a third bedroom but the structure of the house remained the same except for a small open shed held by 4 wooden poles with a corrugated iron sheet roof at the front of the house that was added as a small open veranda.
3. Furthermore, the Respondent stated in her plaint that after some time, her daughter – Maryline - approached her to ask her consent for a potential subdivision of the property into 2 portions whereby the portion with the corrugated iron sheet was to be given to Maryline so that it could subsequently be given to Elvis and the rest of the portion was to be left for the benefit of the rest of the Respondent's children. Maryline informed the Respondent that she and Elvis would financially contribute to the subdivision, and although they kick-started the process, the subdivision was never concluded.
4. Unfortunately, Elvis passed away and Betty Adela continued living in the corrugated house. The Respondent however stated that since Elvis' death, the Appellant was constantly making noise and playing loud music, swearing, and disturbing other people in the vicinity. That there was always a group of people playing dominoes and causing trouble at the house. Further that, the Respondent's other children and family were being disturbed by the noise and they were not given peace to mourn the loss of Elvis with all this commotion.

5. The Respondent further stated in the plaint that the Appellant (Betty Adela) had no legal rights or interest to remain on her property namely Title S4542 and the small house thereon. Upon these facts, that the Respondent sued the Appellant in the Supreme Court.
6. In support of the averments made in the plaint, the Respondent testified that Maryline Adela asked Elvis to purchase the land. At some point, Elvis met with the Respondent and gave her SR 8,000 for purchase of the land. Exhibit D1- an agreement dated 9th February 2015 was adduced as evidence to prove that the Respondent had received SR 8,000 in cash from Mr. Elvis Adela for surveying the property. This agreement was witnessed by Maryline. In cross-examination, the Respondent stated that SR 8,000 was for subdivision of the land.
7. The Respondent further testified that the Appellant was untruthful when she said that she took a loan for home improvements. That the improvements done to the house were done by the Appellant's husband (Elvis). She further testified that she changed her mind concerning the subdivision of the property because of the persecution the Appellant brought to her and the rest of her children.
8. In further support of her case, the Respondent brought two other witnesses - Patrick Arrisol and Egbert Adela.
9. Patrick Arissol, partner of Maryline Adela, testified that he was the one who helped build the house together with Elvis and Egbert. That he would have seen if any work was being done on the property because he lives above the house of the late Elvis. When asked if he saw any tiles being put in the veranda, he testified that he did not see any tiles because he did not go to the house.
10. Egbert Adela - the older brother of Elvis Adela - testified that he helped Patrick Arrisol and the late Elvis Adela build a corrugated iron sheet house and that they got some help with construction materials. He testified that they did not complete the house but the bathroom and everything else were completed. Egbert further testified that he did not know if the Appellant had anything to do with building the house because it was already completed.

When asked about the tiles, he testified that it was his brother who sourced the same. That his late brother got them from another site where they had a job. During examination in chief, Egbert Adela was shown a set of photographs marked Exhibit P1 which he admitted taking on his phone on the 16th of October 2021. He testified that based on the said photographs, everything was there when they constructed the house, except electricity. The old corrugated iron sheets were painted by him and Elvis, except for the veranda and some parts of the front of the house which were completed by his late brother Elvis. He does not know if the inside of the house has been renovated, however, the exterior structure is still the same.

11. During cross-examination. Egbert was asked why he took the photographs in exhibit P1 to which he answered that it was because he heard that the Appellant had taken loans to do renovations but he had not seen any renovations.
12. The Appellant on the hand denied the Respondent's claims and averred that she had legal occupation of the property based on her construction contribution to the property with her own materials and in good faith.
13. Furthermore, that she is a *tiers de bonne-foi* (third party in good faith) and cannot be evicted. That she has the right of retention over the house she has built until she is evicted and paid compensation for her investment in the said property.
14. Apart from the above defence, the Appellant also filed a counterclaim seeking specific performance of the said agreement between the late Elvis Adela and herself for the survey, extraction, registration, and transfer of the portion of land to be extracted from the property to herself and the estate of the late Elvis Adela.
15. In her testimony, the Appellant stated that she took out a loan with Housing Finance Company (HFC) in the sum of SR 50,000. That she took out the said loan with the permission of Simone Adela. She explained that she used the said funds to obtain utilities at the house as well as bricks to improve the bathroom, living room and kitchen.

16. The Appellant further testified that she took a second loan of SR 8,000 from HFC and handed it over to Simone Adela in the presence of Maryline Adela, Elvis and everyone present and signed. The agreement was done in favour of Elvis because he was her husband and he was related to the Respondent who wanted him to take up the issue of land as he was close to his grandmother. She paid the SR 8,000 for the portion of land the Respondent had proposed to sell to them. The Appellant confirmed that this was what was contained in the agreement marked Exhibit D1.
17. The Appellant (Betty Adela) further testified that the SR 8,000 was for the plot of land and the survey, but there was another agreement to be done; however, she has no written proof of the same.
18. The Appellant also explained that she took out another loan in the sum of SR 150,000 from Barclays Bank because her family needed some money and she was the only one employed as the late Elvis did casual jobs. She paid off the housing loan using Barclay's loan to finish adding the living room and veranda that they had to build on a beam and a shelter next to it.
19. The Appellant adduced a copy of her credit profile report which was admitted and marked as Exhibit D8 to show credit information relating to the loans that she had taken out.
20. The Appellant denied that the family members came together when anything had to be done in terms of materials and manpower to improve the house. She testified that even though Elvis was a casual worker, it is only Elvis and herself who had contributed towards building their house.
21. The following three issues were framed for determination by the Trial Court:
  - i. *whether Simone Adela's prayer to evict the Betty Adela can be granted.*
  - ii. *whether there is an agreement between the parties and if so, whether the remedy of specific performance can be given by the Court.*
  - iii. *whether Betty Adela is a tiers de bonne foi.*

22. On issue (i), the Respondent's prayer for eviction was declined in view of the counterclaim by the Appellant regarding contribution to the development of the property.
23. In determination of issue (ii) which was in regard to the prayer for specific performance made by the Appellant, the Trial Judge held that the prayer fails because it was hinged on an unwritten and an unregistered agreement contrary to Article 1321 (4) of the Civil Code.
24. On the third issue, whether or not the Appellant was a *tiers de bonne foi*, the Trial Judge held in the affirmative. That what was left for determination was the compensation due to the Appellant. In determination of the issue of compensation, the Trial Judge held as follows:

*"What Betty Adela has so far proved is that she did get a loan of SR 30,000 for home improvements... I take judicial notice of how HFC disburses loans, in that half is disbursed first and the rest after inspection of the improvements. In the circumstances, therefore, one can reasonably conclude that Betty Adela made improvements with at least SR 25,000 of the loan which prompted the HFC to disburse the remaining SR 25,000. However, Betty Adela has not proved home improvements of the remaining SR 25,000."*

25. In Conclusion, the Trial Judge ordered as follows:
  - i. The plaint and counterclaim partially succeeds.
  - ii. Betty Adela is ordered to leave and vacate the immovable property of the Simone Adela which the Betty Adela is Currently occupying, however, the Simone Adela must pay SR 25,000 for home improvements before the Betty Adela is evicted from the property.
  - iii. Betty Adela be given six months from the date of this, judgment to find alternative accommodation.
  - iv. Simone Adela pays back SR 8,000 for subdivision paid to her by Betty Adela and the late Elvis Adela since the same was not put into effect.
  - v. Both parties to bear their own costs.

26. Dissatisfied with the Trial Judge's decision, the Appellant lodged an appeal before this Court on the following grounds:

**(1) The learned trial judge erred in law and on the facts, in concluding that the agreement relating to the subdivision and transfer of a portion of S4542 between the Appellant and the Respondent, cannot be maintained in law and on which basis the Appellant cannot seek for its specific performance in law.**

**(2) The learned trial judge erred in law and on the facts in concluding that the Appellant's contribution in the construction on land title S4542 cannot be assessed in excess of Rs25,000, this in the face of the evidence tendered by the Appellant which evidence was not controverted by the Respondent.**

27. In the written submissions, the Appellant's counsel stated that ground 1 of the appeal would not be pursued and therefore the appeal will proceed on only ground 2.

**Reliefs sought:**

(a) An order reversing the learned Judge's decision in awarding compensation in the sum of SR 25,000 for home improvements and to substitute her findings in regards to compensation, in light of the provisions under Article 555(4) of the Civil Code and for any other further orders that the Court shall deem fit.

(b) Costs.

**Appellant's submissions**

28. Counsel faulted the learned trial judge for ignoring the evidence adduced to show that the Appellant had taken out a second loan from Barclays bank for the purpose of home improvements on the suit property. Counsel referred to the Appellant's testimony appearing on page 144 of the record in which she stated as follows:

*“[The second loan] was to finish adding the living room and then in front there was a veranda that we did and we had to build it on a beam because how the terrace was we had to build the veranda and on the side we did some sort of shelter so that you can park a*

*transport or sit down underneath but for us to do that we had to crush the rocks for us to build a wall on the side for us to build a shed.”*

29. Counsel also faulted the learned trial judge for ignoring exhibit D2, tendered by the Appellant, which clearly corroborates the testimony above. Counsel submitted that exhibit D2, clearly confirms that the Appellant took out a second loan in the sum of SR144, 000 to pay off HFC loan and to carry out home improvements.

30. Furthermore, counsel referred to paragraph 11 of the plaint filed by the Respondent in which she averred as follows:

*“The Defendant in 2016 took a personal loan from her bank to pay off 2 existing loans and for home improvements and she may have contributed to improve the house by purchasing materials, items over the years and she has made use and benefited from them.”*

31. In counsel’s view, the above averment amounted to a judicial admission, in terms of Article 1356 of the Civil Code which states as follows:

*“A judicial admission is the declaration that a party or a party's specially authorized proxy makes in the course of court proceedings.”*

32. Counsel argued that once an admission has been made, the court or judge must hold the admitted fact to be correct and that the party who made the admission cannot contest the correctness of the admitted fact. Counsel therefore submitted that it was not open to the Respondent to contest the fact that the Appellant took out a personal loan to pay off two existing loans as well as purchase materials to carry out home improvements.

33. On the basis of the above submission, counsel also argued that the learned Trial Judge could not have made a finding of fact that the Appellant only spent SR 25,000 towards home improvements.

34. Counsel further submitted that it is well established that a *tiers de bonne foi* has a right to stay on property until they are compensated in line with Article 555. That according to the



said provision of law, the amount of compensation paid to the *tiers de bonne foi* should be equivalent to the value of the materials and labour expended or a sum equivalent to the added value made on the land. Thus, counsel submitted that the learned Trial Judge failed to properly apply the cited law to the evidence adduced.

### **Respondent's reply**

35. In reply, Counsel argued that the Appellant did not provide any substantial proof of her contributions towards the house. Counsel argued that the Appellant tried to distort the case by stating that she took out several loans to improve the house and that those loans were actually used for the improvements whereas not.
  
36. In light of the above submission, counsel referred to the loan document produced by the Appellant and argued that the contents of the said document showed that the Appellant took out loans to attend to various matters which were unconnected with any development of the property under dispute. Counsel highlighted the following contents of the loan document:
  - i. The first category of funds was to pay off a BOB (possibly Bank of Baroda) loan;
  - ii. The second was to pay off an HFC loan: counsel submitted that nothing under this category of funds shows whether it was to pay for this property or some other property elsewhere and there is no explanation what component of the loan was used for improvement of the house. Furthermore, counsel argued that HFC would never have given a loan for a moveable corrugated iron sheet property belonging to someone else.
  - iii. The third was for a police benevolent loan payment.
  - iv. The fourth category was for home improvements. However, counsel argued that all the Respondent's witnesses testified that the construction and development works were carried out by the deceased (Elvis Adela) since he was a handy man whose job was mainly in the construction industry. That this evidence was not disputed by the Appellant.

37. In conclusion about each of the above categories appearing on the loan document, counsel argued that there was no proof to show that any of the funds obtained through the loan facility were used for improvement of the property in issue. That in fact, one of the photographs produced as exhibits shows that the property is badly damaged with broken tiles in the front of the house.
38. Counsel also submitted that paragraph 11 of the Plea used by the Appellant to purport to show an admission of the use of "all the funds" for improving the house is not correct as the said paragraph is ambiguous and reveals doubts about the quantum used to improve the house. That as a senior police officer in charge of records and data, the Appellant's evidence fell short of proving any values or actual contributions made to the property.
39. Furthermore, counsel submitted that the appeal is frivolous and vexatious in the sense that any injection of funds or contributions made to the house by the Appellant, which she failed to prove, was already compensated for by her enjoyment of the Respondent's property.
40. Counsel also submitted that the Appellant failed to produce evidence to show her actual participation in the agreement between the Respondent and the daughter Maryline and her deceased son towards the proposed planned subdivision and sale of a portion of the property in issue.
41. In conclusion, Counsel prayed that this Court dismisses the appeal with costs.

### **Court's consideration**

42. Ground 2 of the appeal relates to the assessment of the contribution and amount of compensation given to the Appellant by the Trial Judge. The Appellant argued that she made contribution to the development of the property in excess of the award made by the Trial Judge in the sum of SR 25,000. The Appellant argued that the evidence adduced showed that

her contribution was more than SR 25,000 and the said evidence was not controverted by the Respondent.

43. The Appellant based her argument on two pieces of “evidence” –
  1. Exhibit D2, indicating that the Appellant took out a ‘second’ loan in the sum of SR144,000 from Barclays Bank and
  2. Paragraph 11 of the Plaint in which the Plaintiff stated that ‘The defendant in 2016 took a personal loan from her bank to pay off 2 existing loans and for home improvements and she may have contributed to improve the house by purchasing materials items over the years and she has made use and benefitted from them.’ Counsel for the Appellant argued that this statement was a Judicial Admission by the Respondent.
44. In assessing the evidence adduced regarding the Appellant’s contribution to the development of the property as well as the appropriate amount of compensation, the Trial Judge held as follows:

*“The extent of compensation is what this Court will have to determine based on the evidence adduced by the parties. The Court must seek to strike a balance between the property owner and the good faith constructor. Upon this Court’s examination of Exhibit D8 which is a credit profile report of the defendant, it can be seen on page 2 of the said report, that indeed the defendant requested a loan at the HFC. I take judicial notice that there is a mode or approach preferred when issuing housing loans. Half of the loan is first issued to the applicant. The remainder of the loan is later disbursed after verification by HFC that the applicant is improving the house. The verification is usually through the inspection of the premises by a Building Inspector and issuing a certification by the same. With this, it can be reasonably concluded that at least SR 25,000 was used towards home improvements given that the defendant was given the full loan. Beyond the SR 25,000, I am unable to see from the evidence adduced, how the remaining SR 25,000 was used towards home improvements ... While*

*taking full cognizance that the defendant was given SCR 50,000 by HFC for home improvements, she has not produced anything apart from the credit profile report Exhibit 8, to prove her case. What the defendant has so far proved is that she did get a loan of SCR 50,000 for home improvements. And as ... I take judicial notice of how HFC disburses loans ... In the circumstances, therefore, one can reasonably conclude that the defendant made improvements with at least SR25,000 of the loan which prompted the HFC to disburse the remaining SR 25,000. However, the defendant has not proved home improvements of the remaining SR 25,000 ... She is therefore entitled to at least SR 25,000 this Court is satisfied was contributed towards the house.”*

45. It is trite law that a party who alleges a fact must prove it. A careful reading of the judgment of the learned Trial Judge clearly shows that she analysed what was averred and **proved** by the Appellant regarding her contribution to the development of the property in question. That proof was rooted in the fact that the second and final instalment of the loan issued by HFC was upon inspection and satisfaction that the first loan instalment in the sum of SR 25,000 was used for home improvement. However, the learned Judge was of the opinion that there was no evidence adduced to show that the second loan instalment in the sum of SR 25,000 was used for home improvements.
46. I further take note that whereas Exhibit D2 - the evidence of the second loan from Barclays Bank is not disputed - the Appellant did not adduce any evidence to prove how much of it was spent on developing the property. The document shows that the amount loaned was SCR 144,000.00. It indicates that the purpose of the loan was to pay off BOB loan +HFC Loan +Police Benevolent Loan +Home Improvements.” The document does not indicate how much was for home improvement and neither does it show how much was for setting off the Housing Finance loan. During the oral testimony in court, Counsel for the Appellant did not lead the witness to throw light on the meaning attached to the various acronyms in the document. The court had nothing to guide it in arriving at how much more, above the 25,000 SCR had been spent on house developments. The court was not guided on how much of the Barclays Bank loan went to house improvement.

On that front, I find no reason to depart from the above finding of the Trial Judge.


47. Judicial admissions are formal admissions that have the effect of withdrawing a fact from issue and dispensing wholly with the need to prove the fact at issue. Examples of such admissions are statements made in pleadings. Counsel for the Appellant submitted that paragraph 11 of the Pleint was a judicial admission in terms of Article 1356 of the Civil Code of Seychelles. Under the said Article a declaration made by a party in the course of legal proceedings shall be accepted against the person who makes it. It was the argument of Appellant's Counsel that the Respondent admitted in law that the Appellant had contributed in the construction of the house. That it was an admission that the Appellant had indeed invested in the construction of the house and in improving the property. On the other hand, Counsel for the Respondent argued that Paragraph 11 of the pleint cannot be interpreted as an admission that "**all the funds**" borrowed were invested in improving the house and that the paragraph is ambiguous and reveals doubts about the quantum used to improve the house.
48. Whether or not the relevant averment assists the Appellant's case depends on what the issue at hand is. The Plaintiff/Respondent may have admitted that the Appellant took a loan and that she **may** have contributed to improving the house. But this does not answer the question: how much of the loan was invested in improving the house? A judicial admission has the effect of dispensing wholly with the need to prove the fact at issue. What is at issue in this appeal is: how much of the loan was spent on the house? The Appellant had to prove not only that she spent funds on the property but prove the amount she spent (over and above SCR 25,000 awarded to her by the trial court).
49. I note further that the Appellant whose case was that she had made improvements to the house, adduced no evidence to show the state of the property which she testified to have improved. When asked what evidence had been adduced to prove the claim by the Appellant, Counsel for the Appellant answered: *It is only the oral evidence that she took a second loan amounting to SR 144,000 ... other than her oral evidence to the effect that she used that money to improve the house, there is nothing. But her oral evidence is corroborated by the fact that there had been judicial admission by the Respondent ... So there is no evidential basis as to why the learned trail Judge restricts her award to SR 25,000.00.*

50. Counsel for the Appellant seemed oblivious to the need and legal requirement that the Appellant had to prove her claims, at the very least on a balance of probabilities and the court could not have arrived at a figure not based on evidence.


51. I therefore hold that the appeal fails.

**Conclusion:**

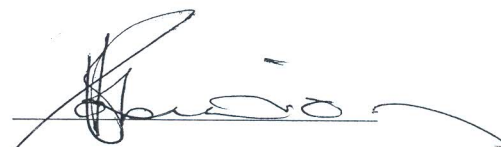
52. i. Since the appeal fails on the sole ground argued, it is hereby dismissed. Consequently, the Orders of the Supreme Court are upheld.
- ii. Costs are awarded in favour of the Respondent.

  
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Dr. Lillian Tibatemwa-Ekirikubinza, JA.

I concur:

  
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Dr. M. Twomey-Woods, JA.

I concur

  
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(F. Robinson, JA

Signed, dated and delivered at Ile du Port on 18 December 2023.